

ELECTRONICALLY FILED
February 13, 2007

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Counsel for the Official Committee Of
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:) BK-S-06-10725-LBR
USA COMMERCIAL MORTGAGE COMPANY,) Chapter 11
Debtor.)

In re:) BK-S-06-10726-LBR
USA CAPITAL REALTY ADVISORS, LLC,) Chapter 11
Debtor.)

In re:) BK-S-06-10727-LBR
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,) Chapter 11
Debtor.)

In re:) BK-S-06-10728-LBR
USA CAPITAL FIRST TRUST DEED FUND, LLC,) Chapter 11
Debtor.)

In re:) BK-S-06-10729-LBR
USA SECURITIES, LLC,) Chapter 11
Debtor.)

Affects)

- ☐ All Debtors)
☐ USA Commercial Mortgage Co.)
☐ USA Securities, LLC)
☐ USA Capital Realty Advisors, LLC)
☐ USA Capital Diversified Trust Deed)
☒ USA First Trust Deed Fund, LLC)

Hearing

Date: March 15, 2007
Time: 9:30 a.m.
Place: Courtroom #1

NOTICE OF FILING AND HEARING RE SIXTH OMNIBUS OBJECTION OF THE OFFICIAL
COMMITTEE OF EQUITY SECURITY HOLDERS OF USA CAPITAL FIRST TRUST DEED
FUND, LLC – CLAIMS BASED ON PREPETITION EQUITY SECURITY INTERESTS OF USA
CAPITAL FIRST TRUST DEED FUND, LLC FILED BY FISERV TRUST COMPANY TEE FBO
JAMES J. TANAKA ACCOUNT NO 853; FISERV TRUST COMPANY TTEE FBO WILMA
PRIM SNOW ACCOUNT NO; STERLING TRUST COMPANY, CUSTODIAN FBO DIONISO
FERNANDES A/C 13692; DONNOLO FAMILY TRUST DTD 8/24/88, JOSEPH & LORETTO
DONNOLO TRUSTEES; RANCH OPEN SPACE OF NEVADA, INC.; DAVID N. WARNER, JR.;
WILLIAM M. SPANGLER; WILLIAM M. SPANGLER, JEAN A. SPANGLER; AND JEAN A.
SPANGLER (AFFECTS DEBTOR USA CAPITAL FIRST TRUST DEED FUND, LLC)

TO: DAVID HUSSMAN (on account of the claim filed by RANCH OPEN SPACE OF NEVADA, INC.)
DAVID N. WARNER, JR.
DIONISO FERNANDES (on account of the claim filed by STERLING TRUST COMPANY, CUSTODIAN FBO DIONISO FERNANDES A/C 13692)
FISERV TRUST COMPANY (on account of claims filed by FISERV TRUST COMPANY TTEE FBO JAMES J. TANKA ACCOUNT NO 853 and FISERV TRUST COMPANY TTEE FBO WILMA PRIM SNOW ACCT NO)
JAMES J. TANAKA (on account of the claim filed by FISERV TRUST COMPANY TTEE FBO JAMES J. TANKA ACCOUNT NO 853)
JEAN A. SPANGLER
JOSEPH & LORETTA DONNOLO (on account of the claim filed by DONNOLO FAMILY TRUST DTD 8/24/88, JOSEPH & LORETTA DONNOLO TRUSTEES)
STERLING TRUST COMPANY (on account of the claim filed by STERLING TRUST COMPANY, CUSTODIAN FBO DIONISO FERNANDES A/C 13692)
WILLIAM M. SPANGLER
WILMA PRIM SNOW (on account of the claim filed by FISERV TRUST COMPANY TTEE FBO WILMA PRIM SNOW ACCT NO)
USA CAPITAL FIRST TRUST DEED FUND, LLC
U.S. TRUSTEE
ALL PARTIES IN INTEREST

PLEASE TAKE NOTICE that on February 13, 2007, the "**Sixth Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC – Claims Based on Prepetition Equity Security Interests of USA Capital First Trust Deed Fund, LLC**" (the "Objection") was filed by the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC (the "FTDF Committee"). **The Objection has been filed to reconcile various claims made against FTDF with the books and records of the FTDF. You should read it. You filed a proof of claim that makes a claim that is different than your interest shown in the books and records of FTDF.**

Pursuant to the Objection, the FTDF Committee objects to the proofs of claim referenced therein (the "Claims on Equity Interests") on the grounds that they do not reflect "claims" against USA Capital First Trust Deed Fund, LLC (the "FTDF") as that term is defined in Bankruptcy Code section 101(5). Rather, the Claims on Equity Interests reflect "equity security" interests based on the membership interests in the FTDF. Accordingly, the FTDF Committee's position is that the Claims on Equity Interests should be reclassified as proofs of interest in the amounts set forth on Exhibit "1" to the Objection. Furthermore, the Claims on Equity Interests

should be disallowed to the extent they assert amounts in excess or other than those reflected in the Debtors' books and records as the amount of a particular member of the FTDF's ("FTDF Member") interest in the FTDF as of the Petition Date, which amounts are set forth on Exhibit "1" to the Objection. By the Objection, the FTDF Committee does not seek to prejudice the rights of any FTDF Member who filed a Claim on Equity Interest (the "Claimants") to recover from the FTDF estate on account of his or her membership interest in the FTDF but simply seeks the entry of a Court order that would (a) properly classify the Claims on Equity Interests that have been filed by the Claimants as proofs of interest in the amount of each Claimant's respective equity interest in the FTDF and (b) disallow the Claims on Equity Interests to the extent that they assert amounts in addition to or other than each Claimant's equity interest in the FTDF as of the Petition Date or are duplicative of other Claims on Equity Interests. This will effectuate a pro rata distribution to all similarly situated equity holders. The Claims on Equity Interests to which this notice relates and the requested treatment of such claims by the FTDF Committee are as follows:

Claim No.	Claimant	Account ID #	Date of Claim	Claim Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
70	Fiserv Trust Company Ttee FBO James J. Tanaka Account No 853	853	October 9, 2006	\$358,422.50	\$358,422.50	Reclassify as proof of interest in the amount of \$358,422.50.
71	Fiserv Trust Company Ttee FBO Wilma Prim Snow Account No	4427	October 9, 2006	\$82,011.50	\$82,011.50	Reclassify as proof of interest in the amount of \$82,011.50.

Claim No.	Claimant	Account ID #	Date of Claim	Claim Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
72	Sterling Trust Company, Custodian FBO Dioniso Fernandes A/C 13692	7362	September 30, 2006	\$32,025.00	\$32,025.00	Reclassify as proof of interest in the amount of \$32,025.00.
75	Donnolo Family Trust DTD 8/24/88, Joseph & Loretta Donnolo Trustees	5162	October 16, 2006	\$258,705.71	\$248,754.00	Reclassify as proof of interest in the amount of \$248,754.00 to the extent claim is in respect of Claimant's alleged investment of \$248,754.00 in FTDF. ¹
77	Ranch Open Space of Nevada, Inc.	9838	October 17, 2006	\$20,075.00	\$20,000.00	Reclassify as proof of interest in the amount of \$20,000.00. Disallow claim to the extent it exceeds \$20,000.00 because amount asserted in excess of \$20,000.00 is on account of anticipated postpetition dividends.

¹ The balance of claim number 75 appears to be on account of the Claimant's investment in a loan made through USA Commercial Mortgage Company. The FTDF Committee objected to such portion of claim number 75 in the "Second Omnibus Objection Of The Official Committee Of Equity Security Holders Of USA Capital First Trust Deed Fund, LLC To Misfiled Claims," which objection was sustained by order of the Court dated February 7, 2007 [docket no. 2711].

Claim No.	Claimant	Account ID #	Date of Claim	Claim Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
82	David N. Warner, Jr.	2216	October 24, 2006	\$23,246.00	\$23,246.00	Reclassify as proof of interest in the amount of \$23,246.00.
89	William M. Spangler	2449	October 25, 2006	\$20,000.00	\$20,000.00	Reclassify as proof of interest in the amount of \$20,000.00. Disallow claim to the extent it exceeds \$20,000.00 and claims damages on account of potential causes of action against FTDF.
90	William M. Spangler, Jean A. Spangler	2053	October 25, 2006	\$100,000.00	\$100,000.00	Reclassify as proof of interest in the amount of \$100,000.00. Disallow claim to the extent it exceeds \$100,000.00 and claims damages on account of potential causes of action against FTDF.

Claim No.	Claimant	Account ID #	Date of Claim	Claim Amount	Amount of Equity Interest Per Debtors' Records	Proposed Disposition
91	Jean A. Spangler	7827	October 25, 2006	\$10,678.50	\$10,678.50	Reclassify as proof of interest in the amount of \$10,678.50. Disallow claim to the extent it exceeds \$10,678.50 and claims damages on account of potential causes of action against FTDF.
127	William M. Spangler, Jean A. Spangler	2053	October 25, 2006	\$100,000.00	\$100,000.00	Disallow claim in full as duplicative of claim no. 90. ²
128	Jean A. Spangler	7827	October 25, 2006	\$10,678.50	\$10,678.50	Disallow claim in full as duplicative of claim no. 91.
129	William M. Spangler	2449	October 25, 2006	\$20,000.00	\$20,000.00	Disallow claim in full as duplicative of claim no. 89.

PLEASE TAKE FURTHER NOTICE that the hearing on the Objection will be held before the Honorable Linda B. Riegler, United States Bankruptcy Judge, in the Foley Federal Building, 300 Las Vegas Boulevard South, Courtroom 1, Las Vegas, Nevada, on **March 15, 2007, at the hour of 9:30 a.m.**

² While the Court's claim register lists this claim as filed by William M. Spangler and Jean A. Spangler in the amount of \$100,000.00, the actual linked document is a claim filed by William M. Spangler in the amount of \$20,000.00. In either case, this is a duplicative claim, as William M. Spangler and Jean A. Spangler filed a proof of claim in the amount of \$100,000.00 on account of account no. 2053 (claim no. 90) and William M. Spangler filed a proof of claim in the amount of \$20,000.00 on account of account no. 2449 (claim no. 89).

1 **PLEASE TAKE FURTHER NOTICE** that this hearing may be continued from
2 time to time without further notice except for the announcement of any adjourned dates and time
3 at the above noticed hearing or any adjournment thereof.

4 **PLEASE TAKE FURTHER NOTICE** that any response to the Objection must
5 be filed by **March 8, 2007** pursuant to Local Rule 3007(b), which states:

6 If an objection to a claim is opposed, a written response must be
7 filed and served on the objecting party at least 5 business days
8 before the scheduled hearing. A response is deemed sufficient if it
9 states that written documentation in support of the proof of claim
10 has already been provided to the objecting party and that the
documentation will be provided at any evidentiary hearing or trial
on the matter.

11 If you object to the relief requested, you *must* file a **WRITTEN** response to this
12 pleading with the court. You *must* also serve your written response on the person who sent you
13 this notice.

14 If you do not file a written response with the court, or if you do not serve your
15 written response on the person who sent you this notice, then:

16 ! The court may *refuse to allow you to speak* at the scheduled hearing; and
17 ! The court may *rule against you* without formally calling the matter at the
18 hearing.

19
20 DATED: February 13, 2007

21 /s/ Andrew M. Parlen
22 Andrew M. Parlen, Esq.
23 Stutman, Treister & Glatt
24 Professional Corporation
25 Counsel to the Official Committee of Equity
26 Security Holders of USA Capital First Trust
27 Deed Fund, LLC
28